1948 File No. O. Gambling /48

Legal DEPARTMENT
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Subject:- P.T.E.

Opinions under the Bombay Prevention of Gambling Act, 1887.

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Prosecution for playing "rummy".

Bombay Prevention of Gambling Act. 1887.

The question whether a prosecution can be launched in respect of the game of "rummy" played in clubs depends on two principal considerations (i) whether it can be regarded as a game of mere skill and (ii) whether the club can be treated as a common gaming house.

"Bridge" may be held as a game of mere skill. See my opinion No. 6415 dated 20-6-1947 and Woolf v. Freeman (1937) all England Law reports vol I.p. 178 where on p. 181 it was observed that it is certainly lawful to play bridge and that it is a game of skill. "Rummy cannot, however, be called a game of mere skill. In the case cited above it was said that whether poker is a game of skill was more questionable. From the gaming point of view there is hardly any substantial distinctions betweem poker and "remmy". The first point is, therefore, likely to be decided in our favour.

The second point, viz. about the club being a common gaming house, would depend upon whether the instruments of gaming are kept or used for profit or gain. Recently a Division Bench composed of Bavdekar and Dixit JJ. decided that point in Criminal Appeal No. 156 of 1948. I would refer to my note on the subject dated 1-3-1948. although Bavdekar J. gave a decision in our favour, his reasoning in my opinion is not quite sound. Profit or gain in this context does not mean actual profit in the sense of the balance left after deducting the expenses. So long as the charge is made with a view to make profit, that is, to gain a pecuniary advantage the requirements of the section would be fulfilled. I think there should be no difficulty in proving in a suitable case that the charge which the players of "rummy" are required to pay in a club is made with a view to making such profit.

In any case, after the decision in Criminal Appeal No. 156 of 1948 our chances of success are brighter. If courts insist upon profit after going through the

receipt of expenditure, we shall have to consider as I said in my note dt 30-3-48 whether we should not amend the Act by bringing it in line with the present English law according to which the mere keeping of a common gaming house is an offence without any insistance upon the purpose of gain.

I woul , therefore, suggest that copies of my opini n dated 20-6-1947 and 1-3-1948 may be forwarded to the Summit Commissioner of Police together with a copy of this note and of the judgment recorded by the High Court in Criminal Appeal No. 156 of 1948. In consultation with the Senior Police Prosecutor the Commissioner of Police may then select a suitable case of a club where it will be easy for us to demonstrate that the charge of "rummy" was being made for the profit or gain of the club.

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Remembrancer of Legal Affairs.

U.R. to R.D. , No. 652-Confl. dated the 30th November 1948.

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I am afraid the public Prosecutor and the Government Pleader have both missed the real point which must be canvassed before the High Court and got settled once for all. "common gaming house" has been defined in section 3 of the Bombay Prevention of Gambling Act, 1887, to mean a house, room or place in which any instrument of gaming are kept or used for the profit or gain of the person owning, occupying or keeping such house, room or place or of the person using such house, room or place whether he has a right to use the same or not. Such profit or gain being either by way of a charge for the use of the instrument of gaming or of the house, room or place or otherwise howsoever. The findings of facts in this case are very clear indeed and raise the issue for a decision in the neatest possible manner. That the instruments of gaming were kept in the place is undisputed The games which were being played were of a purely gambling character is also admitted, That sitting charges were levied is also not denied. With reference to the defence claim that what is collected as sitting charges are voluntary contribution made by the members whether they played or not to meet the deficit and keep the club going, the learned Magistrate says:

> I may however state that I was not much impressed with this part of the story as it is opposed to the evidence in the case, and the true position seems to be that the charges are levied on members playing the games in the club. There is no doubt in my mind that the club did levy some extra charges on members playing the games."

2. On these findings I believe that we have an arguable case which must be debated in the High Court. In the old case of Queen Empress v. Antone (Ratanlal's Unreported Criminal Cases. p.706) a house was rented by some members of the Goanese community in the name of one of the members who kept the house. The use of the house was not open to the public but was restricted to the members, Some members played for money with cards, the member keeping the house not making any profit by way of a charge for the use of either the cards or the house. It was held upon the wording used in the section before it was amended that the building could

could not be treated as a common gaming house, and could be regarded as more than a club house. The underlined words in the section quoted above make it clear, in my opinion, that it can be applied equally to the case of a club the members of which collectively use the place and levy a charge for the games played by certain members. The words "whether he has a right to use the same or not indicate that members who have a com on-right to use the club were also in view. Similarly, the words "otherwise Howsoever" are wide enough to include a charge made for any purpose. In the case of Emperor v. Dattatraya (25B.L.R. ~~1908~~ 1089) it was held ~~xkx~~ that the profit or gain may not actually result from such use, but if profit or gain is the probable and expected result of the game itself, and if that is the purpose of keeping or using the instruments, it would be sufficient to bring the case within the scope of the definition . At the same time it is clear that the prosecution must establish that the purpose is profit or gain. This may be done either by showing that the owner was charging for use of the instruments of gaming or for the use of the house, room or place or in ~~xxx~~ any other manner that may be possible under the circumstances of the case having regard to the nature of the game carried on in that house. The learned Magistrate has fallen into an error in imagining that the person must be some owner or occupier independent of the members of the club; in this respect it must be further pointed out that in this case one of the members is himself the owner of the house from whom the club has rented it. The wording of the section is adequate to cover the case where the profit or gain may be of the members ~~xx xxxxx xxx xxxx xxxxx xxx xxxxx~~ themselves as members of the club. It is true that in the case of Emperor v. Kallappa (4)-(41 B.L.R.971) Broomfield Acting C.J. distinguished the case of a club on the ground that in the case of a club it is not usual for a charge to be made for the profit and benefit ~~xx~~ the owner or occupier of the premises. But that observation was besed upon the wording before the amendment introduced in 1941 by which the words "or the person using such house, room or place whether he has a right to use the same or not" were inserted The other point of distinction which Broomfield

Broomfield Acting C.J. made was that, in the case of a club the place is not open to any member of the public but only to the members of the club and perhaps their guests. That point also loses its force in view of the amended wording. On the other hand, Stone C.J. in a recent case (Imperator v. Hasanalli Mhhomedalli) doubted the force of Broomfield J's observations and stated that they were only obiter dicta and not binding upon the High Court or upon any inferior court.' Stone C.J. seems inclined to bring the case of a club within the ambit of the section, and I for myself am in agreement with that view. The fact that the club is a private social club having other social objects and amenities in view would not make the slightest difference. For that purpose we can safely rely upon the series of English decisions where it has been clearly laid down that so long as the unlawful activity of gambling comes within the mischief of any enactment, the fact that the club was a bona fide social club would not affect the legal position; See Janks v. Furpin (13 Queens Bench Division P 505) ~~v. Pinks~~ which Stone C.J. seemed inclined to follow; Daniels V Pinks) (1931, 1 King's behch, 374); and Jackson v. Both (1919, 1 King's Bench 102 at p. 114)

2. The strongest possible argument on behalf of the defence would be on the lines taken by Rayner Goddard K.C. (now Lord Chief Justice of England) in the case of Daniels v. Pinks at p. 380 of t e report. However, it would be possible to meet that argument on the wording of our Statute.

4. In any case, this is a question which must be got settled once for all. This is indeed a very acute case; for the Magistrate is convinced that the club existed for no other purpose than that of gambling, and that the prosecution was not far wrong in describing it as a gambling den. He even suggested amendment of the Act. If the High Court reject our appeal - and they should be specifically invited to expre__ their view of the low - then, we would have to amend the Act by bringing it in line with the present English law according to which the mere keeping of a common gaming house is an offence without any insistance upon the purpose of gain.

I would, therefore, advise that an appeal should be filed in this case, and the Government Pleader instructed on the above lines of this note. If necessary, the Advocate General may also appear. I do not understand how the attitude of the Court as at present constituted is of any relevance, as the Government Pleader seems to think. The Court is bound to administer the law as it finds fit. Whatever be the personal predilections of the Judges regarding gambling in a club. This case would give us an opportunity of finally disposing of the criticism made against us that in the matter of gambling there is one law for the rich and another for the poor. I feel very strongly that not only should we repel the criticism, but should make every attempt to have the same law for both the rich and the poor.

As the administrative period expires on 5-5-1948 orders may be passed early.

Id. P.M.L.

Secy H.D. Id. - 2/3

H.M.(L) Id D.D. 3/3
H.M.(H) Id. M.R.D. 3/3

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